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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,656	07/07/2003	Stephen L. Parkhurst	SLP100/4-US	7534

7590 06/23/2005

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Vinson & Elkins Docketing Office
2300 First City Tower
1001 Fannin Street
Houston, TX 77002-6760

EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,656

Applicant(s)

PARKHURST ET AL.

Examiner

Krisanne Jastrzab

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28,30-32,34-36,38-40,42-45,47-49,51-53 and 55-57 is/are rejected.
- 7) ☒ Claim(s) 29,33,37,41,46,50,54 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 28, 32, 36, 40, 45, 49, 53 and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are found to be vague and indefinite because they set forth a weight percentage for the promoter, but improperly define it by itself. Clarification is required. It is assumed for purposes of the art rejection to follow, that Applicant intended for it to be a weight percentage based on the composition.

Further with respect to claim 45, this claim is incorrectly set forth as depending from claim "14b". Correction is required.

Double Patenting

Applicant is advised that should claims 27-28 be found allowable, claims 30-32 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 9-10, 13-14, 16, 18-19, 25-28, 30-32, 34-36, 42-45 and 51-53 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thomas et al., U.S. patent No. 5,976,193.

Thomas et al., teach a composition for combating odor including an odor-mitigating reagent, which acts as a Lewis acid to react with odors caused by compounds comprised of Lewis bases thereby neutralizing the odor. The reagent is present from 1-25% by weight of the composition, with water as a liquid carrier and including promoting agents such as preservatives and surfactants. The composition treats the air and can be applied to inanimate objects as well as the hair of living organism. The composition can be applied by spraying in aerosol form. See column 2, lines 38-52, column 3, lines 60-66, column 4, lines 17-25, column 5, lines 1-3 and lines 23-25, column 6, lines 29-45 and the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6, 8, 11-12, 15, 17, 20-21, 23-24, 38-40, 47-49 and 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al., in view of Applicant's admission of the state of the prior art.

Thomas et al., clearly teaches the recognized reactivity of Lewis acids/bases, and Applicant's admission of the state of the prior art at paragraph 17, of page 5 of the instant specification clearly states that malodorant compositions have basis as both Lewis acids and bases; thus with that recognition, it would have been well within the purview of one of ordinary skill in the art to provide an odor-mitigating Lewis base instead of, or in addition to the Lewis acid of Thomas et al., because it would provide neutralization of both categories of malodorants.

With respect to claims 23-24, it would have been obvious as set forth above, to include both an odor-mitigating Lewis acid and base because it would ensure neutralization of all odors present, and packaging/storing them separately would be intrinsic to the provision of both types in view of their recognized reactivity with each other.

With respect to claims 11-12 and 20-21, Thomas et al., teach spray application of the composition, however, the provision of deodorant composition in foam and gel form is well recognized in the art and it would have been obvious to one of ordinary skill in the art to provide the composition in any known and well recognized vehicle of deodorant application.

Allowable Subject Matter

Claims 29, 33, 37, 41, 46, 50, 54 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the closest prior art of record, namely Thomas et al., fails to teach or suggest the specific odor-mitigating reagents set forth in the claims listed above.

Terminal Disclaimer

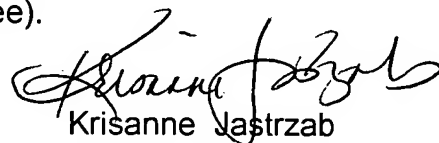
The terminal disclaimer filed on 3/25/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. patent No. 6,528,014B1 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Krisanne Jastrzab
Primary Examiner
Art Unit 1744

June 22, 2005